

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MISSISSIPPI STATE CONFERENCE OF
THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE, ET AL.

PLAINTIFFS

V.

CIVIL ACTION NO. 3:22-CV-734-DPJ-HSO-LHS

STATE BOARD OF ELECTION
COMMISSIONERS, ET AL.

DEFENDANTS

ORDER

This case is before the Court on Defendants’ Motion to Dismiss [17] and Plaintiffs’ Motion to Lift Stay [26]. Defendants Dan Eubanks and Dean Kirby ask the Court to dismiss the claims against them (with prejudice) based on lack of standing, sovereign immunity, and legislative immunity. Defs.’ Mem. [18] at 2.

In response to that motion, Plaintiffs voluntarily dismissed the claims against Eubanks and Kirby under Federal Rule of Civil Procedure 41(a) in a Notice of Voluntarily Dismissal [24]. *See* Fed. R. Civ. P. 41(a)(1)(A)(i) (permitting voluntary dismissal by a plaintiff “before the opposing party serves either an answer or a motion for summary judgment”). They then argued in their Response [25] that Defendants’ motion is moot, and they separately filed a Motion to Lift Stay [26]. Finally, Plaintiffs filed an Amended Complaint [27] that removes Eubanks and Kirby as defendants under Rule 15(a)(1)(B).

Defendants never filed a reply in support of their motion to dismiss and filed no response to the motion to lift stay. The Court concludes that the Defendants’ motion to dismiss is moot and should be denied and that Plaintiffs’ motion to lift stay is meritorious and unopposed. *See* L.U.Civ. R. 7(b)(3)(E) (“If a party fails to respond to any motion, other than a dispositive

motion, within the time allotted, the court may grant the motion as unopposed”).

IT IS, THEREFORE, ORDERED that Defendants’ Motion to Dismiss [17] is denied and Plaintiffs’ Motion to Lift Stay [26] is granted.

IT IS FURTHER ORDRED that the parties must contact United States Magistrate Judge F. Keith Ball within seven days of this Order to set the case for case-management conference.

SO ORDERED AND ADJUDGED this the 11th day of April, 2023.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE